

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CORNELL E. SQUIRES,

Plaintiff,

Case No. 10-13536

Hon. Marianne O. Battani

v.

WILLIAM J. DARNELL, et al.,

Defendants.

OPINION AND ORDER OF DISMISSAL FOR FAILURE TO PROSECUTE

Plaintiff Cornell E. Squires filed his Complaint and Demand for Jury Trial on September 3, 2010. On December 16, 2010, this action was reassigned pursuant to Administrative Order 10-AO-036. On December 20, 2010, the Court issued an Order to Show Cause Why Case Should Not be Dismissed, Without Prejudice (Doc. No. 3) based on Plaintiff's failure to serve the summons and complaint as required by Rule 4(m). FED. R. CIV. P. 4(m).

In his response to the Order, Plaintiff informs the Court that he had not received all the exhibits and information he needed and therefore filed his complaint with "incomplete information and upon sketchy data." (Doc. No. 4, ¶ 2.) In addition, Plaintiff has "been dealing with other legal issues relating to his residential mortgage" (*id.*, ¶ 5) and asks for his "Day in Federal Court" (*id.*, ¶ 7.). The Court's focus in this matter is not on any inadequacy of the Complaint, but on Plaintiff's failure to serve the Complaint.

Federal Rule of Civil Procedure Rule 4(c)(1) provides that a plaintiff is responsible for serving the summons and complaint within the applicable time period. The time limit

for service of process is 120 days after the filing of the complaint. FED. R. CIV. P. 4(m). “Absent a showing of good cause to justify a failure to effect timely service, the Federal Rules of Civil Procedure compel dismissal.” Byrd v. Stone, 94 F.3d 217, 219 (6th Cir. 1996) (citation omitted). Here, the deadline for service is long passed.

In his response, filed January 4, 2011, Squires asks the Court for ten days to allow him time to file and serve an amended complaint. Despite the passage of over two months, he has taken no further action. Plaintiff does not need leave of the Court to file an amended complaint; yet, he has failed to file an amended complaint. More importantly, he has not served Defendants.

In sum, Squires has not made a showing of good cause to justify his failure to serve Defendants within the time allowed by the Federal Rules of Civil Procedure.

Accordingly, the Court **DISMISSES** this action without prejudice pursuant to FED. R. CIV P. 41(b); E.D. Mich. LR 41.2

IT IS SO ORDERED.

s/Marianne O. Battani
MARIANNE O. BATTANI
UNITED STATES DISTRICT JUDGE

DATE: March 30, 2011

CERTIFICATE OF SERVICE

A copy of this Order was mailed and/or e-filed to Plaintiff on this date.

s/Bernadette M. Thebolt
Case Manager